



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF-035]

Decision and Order Granting a Waiver to Liebherr Canada Ltd. from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of its decision and order (Case No. RF-035) granting Liebherr Canada Ltd. (Liebherr) with a waiver from the DOE electric refrigerator and refrigerator-freezer test procedures for the basic models set forth in its petition for waiver. In its petition, Liebherr sought to use an alternate test procedure that would permit the testing of its all-refrigerator model while physically connected to Liebherr's companion upright freezer model, which is necessary for the refrigerator to function properly. Under today's decision and order, Liebherr shall be required to test and rate these refrigerator-freezers, subject to use of the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371, E-mail: Bryan.Berringer@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-8145. E-mail: Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Liebherr a waiver from the applicable residential refrigerator and refrigerator-freezer test procedures in 10 CFR part 430, subpart B, appendix A for certain basic models of refrigerator which shares a control panel with an accompanying freezer, provided that Liebherr tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Liebherr from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results.

Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency,
Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Liebherr Canada Ltd. (Case No. RF-035)

I. *Background and Authority*

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential electric refrigerators and refrigerator-freezers that are the focus of this notice.¹ Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, it authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for residential electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver from the test procedure requirements for a particular basic model for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially

¹ For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver from the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. *Liebherr's Petition for Waiver: Assertions and Determinations*

On September 27, 2013, Liebherr filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A. The subject of the waiver petition is Liebherr's all-refrigerator model, which shares a control panel with an accompanying freezer. Testing to the procedures in Title 10 of the Code of Federal Regulations

(10 CFR), part 430, subpart B, appendix A, section 3 Test Control Settings requires that refrigerators with a user operable temperature control be tested with the control set in a prescribed manner according TABLE 1—TEMPERATURE SETTINGS FOR ALL-REFRIGERATORS. According to Liebherr, following this requirement is not possible for the models at issue unless the refrigerator is connected to the accompanying freezer, which houses the control panel for both appliances. Liebherr’s petition seeks permission to allow a freezer, with the appropriate connection and control panel, to be connected to the refrigerator for the sole purpose of changing the control settings in the refrigerator under test.

In its petition, Liebherr asks to use an alternate test procedure to test these products. Specifically Liebherr proposes to place the refrigerator in a position for testing that would enable the freezer to be located close enough to attach the low voltage connection (approximately 18”) between the two components without interfering with the ambient air flow or other testing conditions. As part of this modification, the refrigerator’s low voltage cable would be connected to the freezer, at which point, the freezer would be plugged in and switched off and the refrigerator portion of the control panel would be set to the appropriate temperatures for the refrigerator test.

DOE has determined that it is desirable to have similar basic models, such as those addressed by this most recent Liebherr petition, tested in a consistent manner and is adopting the same approach laid out in its prior decision by permitting Liebherr to use the alternate test procedure specified in this Decision and Order.

III. *Consultations with Other Agencies*

DOE consulted with the appropriate staff at the Federal Trade Commission (FTC) concerning the Liebherr petition for waiver. The FTC staff did not have any objections to granting a waiver to Liebherr.

IV. *Conclusion*

After careful consideration of all the material that was submitted by Liebherr and DOE's consultation with the FTC staff, it is ordered that:

(1) The petitions for waiver submitted by Liebherr Canada Ltd. (Case No. RF-035) are hereby granted as set forth in the paragraphs below.

(2) Liebherr shall be required to test and rate the following Liebherr models according to the alternate test procedure set forth in paragraph (3) of this section:

RB 1420; and

R 1420.

(3) Liebherr shall be required to test the products listed in paragraph (2) above according to the test procedures for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, appendix A, except that for the Liebherr products listed in paragraph (2) only, test its refrigerator models, with a modification to address the connection of the refrigerator to the freezer. For the purposes of granting the Decision and Order, DOE has modified slightly the language of Liebherr's suggested alternative test procedure to be more consistent with the

language of the DOE test procedure. For the purposes of testing, the models addressed in this notice, the following shall be treated as an additional requirement in Section 2 of Appendix A addressing test condition:

2.11 Connection of refrigerator cabinet to separate freezer cabinet: The refrigerator shall be positioned for testing in accordance with this section, with the freezer positioned close enough to the refrigerator to allow attachment of the low voltage connection (approximately 18”), but not in a location in which the freezer interferes with the ambient air flow or other testing conditions specified in this section. The refrigerator’s low voltage cable shall be connected to the freezer prior to testing. The freezer must be plugged in in during testing, but shall be placed in the “off” position on the control panel. The refrigerator portion of the control panel shall then be used to set the appropriate temperatures for the refrigerator test as required by Section 3. Test Control Settings and perform the remainder of the test as prescribed by this Appendix.

(4) Representations. Liebherr may make representations about the energy use of its refrigerator-freezer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

DOE notes that Liebherr has not petitioned for a test procedure waiver nor requested an interim waiver for its accompanying freezer models. Thus, the freezer models shall be tested according to the applicable test procedure in appendix B to subpart B of 10 CFR part 430 without modification.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid and accurate. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in Liebherr's September 27, 2013, petition for waiver. The granting of this waiver does not release the petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on April 4, 2014.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

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